Judgment will accordingly be entered for the plaintiff as claimed with costs.

Judgment for the plaintiff.

Solicitors: *D. G. Ironside; Lee & Lee.*

M. S. ALLY & CO. LTD. v. CALHAEM

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 3, 1964]

[K.L. — Federal Court Civil Appeal No. 34 of 1964]

Damages — Wrongful attachment — Whether person wrongfully attached could claim damages.

In this appeal the Federal Court reversed the judgment in *Calhaem* v. *M. S. Ally & Co. Ltd.* [1964] M.L.J. 289 and allowed the appeal with costs on the ground that the statement of claim was bad and disclosed no cause of action.

Editorial Note: The Honourable Lord President delivered an oral judgment and we have been informed by his Lordship's secretary that there was no recorded judgment. We understand from counsel for the appellant that the following authorities and cases were cited in argument:— (1) *Sarkar's* Code of Civil Procedure (8th Edition) Vol. 1; (2) *Halsbury* (3rd Edition) Vol. 38 p. 574; (3) *Halsbury* (3rd Edition) Vol. 2 p. 166; (4) *Blay* v. *Pollard* [1930] 1 K.B. 634; (5) *Churchill* v. *Siggers* 118 E.R. 1389; (6) *De Medina* v. *Grove* 116 E.R. 67; (7) *Davies* v. *Jenkins* 152 E.R. 1005; (8) *Phillips* v. *General Omnibus Co.* (1880) 50 L.J.Q.B. 112; (9) *Huffer* v. *Allen* (1866) 15 L.T. 225; L.R. (1866) 2 Exch. 15; (10) *Kepong Prospecting Co. Ltd.* v. *Schmidt* [1962] M.L.J. 375; (11) *Manjappa Chettiar* v. *Ganapathi* I.L.R. 35 Mad. 589; (12) *Clissold* v. *Cratchley* [1910] 2 K.B. 244; (13) *Foley* v. *Hill* (1848) 2 H.L.C. 28; (14) *Joachinson* v. *Swiss Bank* [1921] 3 K.B. 110; (15) *Re Thynne* [1911] 1 Ch. 282; (16) *Marshall* v. *James* [1905] 1 Ch. 432.

FEDERAL COURT.

Peter Mooney for the appellants.

A. D. Rajah for the respondent.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

YEOW FOOK YUEN & ANOR. v. REGINA

[A.Cr.J. (Wee Chong Jin C.J.) November 25, 1964]

[Singapore — Magistrate's Appeal No. 43 of 1963]

Penal Code, ss 24, 109, 406 and 408 — Misappropriation of union funds — Acted "dishonestly" — What amounts to — Abetment — Criminal breach of trust.

Criminal Procedure — Charge — Alteration — Recall of witness — Criminal Procedure Code (Cap. 132), s. 160.

The first appellant, the honorary treasurer of a trade union was charged with two charges of wilfully suffering the second appellant, the general-secretary of the union, to dishonestly misappropriate two sums amounting to $7,500 from the funds of the union contrary to section 406 of the Penal Code. The 2nd appellant was charged with abetment of the offence contrary to sections 109 and 406 of the Penal Code. The main defence of both appellants was that the sum of $7,500 was taken by the 2nd appellant by way of loan or loans from time to time, and that although these loans were taken without prior approval, they were approved by the executive council of the union at a later date.

After the prosecution had closed its case the trial judge, having formed the view that both appellants had a case to answer on criminal breach of trust simpliciter and abetment thereof on the ground that the 1st appellant was not a servant in the employ of the union and therefore not a servant within the meaning of section 408 of the Penal Code, amended the charges against the appellants who then claimed trial on the amended charges. Before the trial judge called upon the appellants to enter upon their defence, counsel for the appellants applied to recall the main prosecution witness and his purpose for so doing was "to show that this witness has been coached. He has motive to implicate the second accused". The application was disallowed on the ground that it was not consequential upon and had no reference to the charges as amended and therefore he could not recall the witness for that purpose at that stage but could do so later when the two appellants made their defence.

Held: (1) on the facts before the district court there was ample evidence to support a finding that both appellants acted "dishonestly" within the meaning of section 24 of the Penal Code;

(2) the trial judge was right in rejecting the application to recall the witness as the appellants had no absolute right under section 160 of the Criminal Procedure Code to recall and examine a witness where the purpose of that application had no reference to the altered charges;

(3) the trial judge was correct in rejecting the defence contention that the approval given by the executive council subsequent to the taking of the money and at a time when the police were already investigating the matter afforded a complete defence in law in respect of the charges;

(4) taking all the factors and the observations of the trial judge into consideration, the sentences of both appellants should be varied from imprisonment to a fine on each charge.

Cases referred to:—

(1) *Nagendra Nath Sen* v. *Emperor* A.I.R. 1932 Cal. 486.

(2) *Ong Boon Siang & Ors.* v. *Regina* [1961] M.L.J. 4.

MAGISTRATE'S CRIMINAL APPEAL.

T. T. Rajah for the appellants.

Francis T. Seow (Senior Crown Counsel) for the respondents.

Wee Chong Jin C.J.: The first appellant is appealing against his conviction by the First Criminal District Judge on the following two charges:—

First Charge:

"You, Yeow Fook Yuen, the Honorary Treasurer of the Singapore Harbour Board Staff Association, Old Clubhouse, Cantonment Road, Singapore, are charged that you, between the 28th day of February, 1961 and the 30th day of December, 1961, at Singapore, being the Treasurer of the aforesaid Singapore Harbour Board Staff Association, and in such capacity entrusted with dominion over property, to wit, the aforesaid Singapore Harbour Board Staff Association funds, wilfully suffered one Jamit Singh, the General-Secretary of the aforesaid Singapore Harbour Board Staff Association, to dishonestly misappropriate the sum of Dollars Three Thousand and five hundred ($3,500) from the aforesaid funds and you have thereby committed an offence